

VSH FUTURES AND CERTIFICATE OF NEED CROSSWALK

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From the Vermont Department of Health



“VSH FUTURES” AND “CERTIFICATE OF NEED” ANALYSIS

INDEX

Objectives.....	2
Need.....	3
Cost.....	5
Construction.....	7
Number/Location of Beds.....	9
HRAP.....	11
Standards of Care.....	12
Quality of Care.....	14
Patient-Centered Care.....	15
Substance Abuse.....	16
Suicide Prevention.....	17
Outpatient Care.....	18
Housing.....	19
Service Delivery.....	20
Issue Not Addressed in Futures Legislation.....	21
Interested Party Status.....	22

I. OBJECTIVES

The CON statute's declared purpose is to promote the rational allocation of health care resources in order to control health care costs and to improve the quality of and access to health care services. The statute seeks to accomplish these objectives by establishing regulatory review of need, cost, type, level, quality and feasibility for every major new health care project in the State.

VSH Futures legislation exists to ensure that mental health services currently provided at VSH continue to be available following that institution's closure and that mental health resources are "allocated efficiently and produce the best positive outcomes." To that end the Legislature established the VSH Future Planning Advisory Group and the Mental Health Oversight Committee. The Advisory Group is charged with weighing various mental health service delivery alternatives and providing recommendations regarding these alternatives to the Secretary of Human Services. The VSH Futures legislation specifically directs the Futures Advisory Group to consider a variety of factors, including cost, number and location of beds, and quality.

Working from the recommendations of the Futures Advisory Group, the Secretary of Human Services is to provide a comprehensive strategic plan for the delivery of mental health services to the Legislature's Joint Fiscal Committee and the Mental Health Oversight Committee. The Mental Health Oversight Committee reviews the Secretary's recommendations, considers whether they meet the legislation's objectives "effectively, efficiently, and satisfactorily," and then votes to approve, modify, or disapprove the recommendations developed "within the context of long-range planning for a comprehensive continuum of care for mental health services." Thus, the CON statute and the VSH Futures legislation require inherently duplicative processes.

In addition, the general assembly has passed specific legislation appropriating funds to BGS for work on the VSH project. Act. No. 43 of the Public Acts of 2005 specifically appropriated \$ 625,000 to BGS for "future planning" associated with the state hospital. This legislation placed restrictions on the use of the funds and required a detailed itemization to be approved by the Mental Health Oversight Committee and Joint Fiscal Committee. This year's capital bill (currently in conference committee), includes a request for funds for "continued planning, design, permitting associated with the creation of a new inpatient facility to replace the current Vermont State Hospital. This appropriation also mandates detailed itemization, approval by the Joint Fiscal Committee and the Mental Health Oversight Committee, and reporting to the Mental Health Oversight Committee during the calendar year 2006.

A. CON Statute – Statement of Purpose

18 VSA § 9431 (Policy and Purpose):

(a) It is declared to be the public policy of this state that the general welfare and protection of the lives, health and property of the people of this state require that all new health care projects be offered or developed in a manner which avoids unnecessary duplication and contains or reduces increases in the cost of delivering services, while at the same time maintaining and improving the quality of and access to health

care services, and promoting rational allocation of health care resources in the state; and that the need, cost, type, level, quality, and feasibility of providing any new health care project be subject to review and assessment prior to any offering or development.

B. VSH Futures Legislation

Act No. 122, 2003-04, § 141a (VSH Future Planning Advisory Group):

(a) *It is the intent of the general assembly that all mental health programs, services, and supports, including inpatient psychiatric services, be provided to individuals with psychiatric disabilities or diagnoses or emotional disorders in a holistic, comprehensive continuum of care, that consumers be treated at all times with dignity and respect, that public resources be allocated efficiently and produce the best positive outcomes, and that direct services overseen and provided by the agency of human services and its community partners be client- and family-centered and driven, accessible, and culturally competent.*

(b) *The secretary of human services shall be responsible for the development and, upon approval by the mental health oversight committee and joint fiscal committee, implementation of a comprehensive strategic plan for the delivery of services currently provided by the Vermont state hospital developed within the context of long-range planning for a comprehensive continuum of care for mental health services. The secretary shall upon passage establish a statewide state hospital future planning advisory group to advise the secretary on development and implementation of a strategic plan related to developing alternatives to the services currently provided by the Vermont state hospital. . . .*

(e) *The secretary or designee shall consult with the advisory group on all aspects of strategic planning, including methods of seeking further public input, investigation of program options and policies, and recommendations concerning organization, operations, funding, and implementation. . . .*

(h) *On or before October 15, 2004, the secretary shall prepare and present for approval to the mental health oversight committee an outline of the findings and recommendations for replacement of the functions of the Vermont state hospital.*

(i) *On or before January 15, 2005, the secretary shall prepare and present to the mental health oversight committee and the joint fiscal committee a report containing a comprehensive implementation plan for replacing the services currently provided by the Vermont state hospital developed within the context of long-range planning for a comprehensive continuum of care for mental health services. The report shall include proposals for legislation and capital and operational funding needed to implement the plan.*

Act No. 122, 2003-04, § 141c (Mental Health Oversight Committee):

(b) *The committee shall review whether the secretary's study on the department of developmental and mental health services designated agency provider system required in Sec. 141 of this act, the strategic plan for developing alternatives to the Vermont state hospital required in Sec. 141a of this act, and the department of corrections mental health services plan achieve the goals and principles stated herein effectively, efficiently, and satisfactorily, including that the findings and recommendations of the reports are coordinated and complementary. The committee shall specifically: . . .*

(4) *review and approve, modify, or disapprove the recommendations contained in the reports required by Secs. 141 and 141a of this act and authorize preliminary implementation steps for developing alternatives to the services currently provided by the Vermont state hospital developed within the context of long-range planning for a comprehensive continuum of care for mental health services.*

II. NEED

The CON statute broadly directs BISHCA to consider the need for a proposed project. BISHCA's HRAP CON standards are more specific, stating that BISHCA will consider

whether the project will improve the quality of health care, whether it will help meet the needs of medically underserved groups, whether existing resources are able to meet the need, and whether in the project's absence, patients will experience problems with respect to health care cost, availability, quality, or accessibility. The HRAP CON standards also require the applicant adopt procedures to "ensure appropriate utilization." The CON applicant must demonstrate that it has attempted to discover and implement "collaborative approaches" to meeting need.

The Vermont Legislature has, through the VSH Futures legislation, provided for the development of "a comprehensive implementation plan for replacing the services currently provided by the Vermont state hospital." The Legislature has directed the Futures Advisory Group and the Secretary of Human Services in developing this plan to consider a range of alternatives, including:

- whether new general or forensic inpatient programs should be created . . . ;
- whether designated hospitals should be encouraged to expand existing psychiatric services;
- whether additional community-based, hospital alternative, or diversion programs should be developed;
- whether the state should expand community-based peer run programs;
- whether to create a flexible individual case management program to fund support services necessary to keep individuals out of the hospital.

The Legislature further required the Futures Advisory Group to assure that "designs for programs that are responsive to changes over time in levels and types of need, service delivery practices, and sources of funding."

More recently, the Legislature has determined that the VSH Futures Plan is needed, adopting the plan's recommendations and declaring that "[t]he current state hospital facility should be replaced with a facility or facilities with fewer than 54 beds and with meaningful programmatic integration of medical and community mental health services." The need for a new inpatient facility has thus already been decided by the Legislature.

It is important to note that most "health care facilities" are not constructed by the State. In other words, these projects are not subject to the scrutiny and approval of the General Assembly. The fact that the Legislature has already found a need for the proposed project coupled with the extensive continuing public and legislative review that the project has and will receive, renders this aspect of BISHCA's CON review process superfluous.

A. CON Statute

There is an identifiable, existing, or reasonably anticipated need for the proposed project which is appropriate for the applicant to provide. 18 V.S.A. § 9437(3).

The project will serve the public good. 18 V.S.A. § 9437(6).

B. HRAP CON Standards

1. *The project is needed to meet an identifiable, existing, or reasonably anticipated need and:*
 - a. *current resources are unable to meet the need,*
 - b. *the project will improve health outcomes,*
 - c. *utilization review procedures will be put in place to ensure appropriate utilization, and*
 - d. *in the absence of the proposed new service, patients would experience serious problems in terms of costs, availability, quality, or accessibility in obtaining care of the type proposed.*
4. *That the project will help meet the needs of medically underserved groups and the goals of universal access to health services.*
5. *That the applicant has taken appropriate and reasonable steps, both prior to and in conjunction with development of the proposed project, to discover and implement collaborative approaches, in conformance with State and Federal laws, to meeting the needs identified in the proposal, including collaborating with other similar providers, dissimilar providers and other entities in its service area, in-state region, State, and appropriate regions beyond Vermont.*

C. VSH Futures Legislation

Act No. 71, 2005-06, § 113e (a):

The general assembly adopts the principles in the May 31, 2005 draft report from the department of health for restructuring the delivery of mental health services currently received in the Vermont state hospital, including the following:

- (1) *The current state hospital facility should be replaced with a facility or facilities with fewer than 54 beds and with meaningful programmatic integration of medical and community mental health services.*

Act No. 122, 2003-04, § 141a (g):

The state hospital future planning advisory group shall consider and make recommendations to the secretary on the following:

- (1) *in general, the future of Vermont's inpatient psychiatric programs, including those currently provided by the Vermont state hospital and, more specifically, whether new general or forensic inpatient programs should be created, either in partnership with designated hospitals or with hospitals or other facilities that do not currently provide inpatient psychiatric services;*
- (2) *designs for programs that are responsive to changes over time in levels and types of need, service delivery practices, and sources of funding;*
- (3) *whether designated hospitals should be encouraged to expand existing psychiatric services;*
- (4) *whether additional community-based, hospital alternative, or diversion programs should be developed;*
- (5) *whether the state should expand community-based peer run programs;*
- (6) *whether to create a flexible individual case management program to fund support services necessary to keep individuals out of the hospital.*

III. COST

One of the primary purposes of the CON statute is to contain health care costs. The statute seeks to accomplish this objective by requiring BISHCA to ensure that the

applicant possesses adequate financial resources to undertake the project, and to inquire whether less expensive alternatives would be appropriate.

The Legislature has directed the Futures Advisory Group and the Secretary of Human Services to consider sources of funding for the project and to “include proposals for legislation and capital and operational funding needed to implement the plan.” The Legislative appropriations process necessarily involves an inquiry into the expense of the project. It is the Legislature’s role to ensure that adequate and appropriate financial resources are made available to implement the VSH Futures Plan. BISHCA does not have the authority to override specific legislative funding decisions.

As noted earlier, appropriations for this project have been made to BGS for planning and design on this project. BGS’s responsibilities include, but are not limited to: (i) preparing plans and specifications for construction of the VSH project; (ii) sight selection, purchase of lands, determination of plans and specifications; and (iii) determining the time for beginning and ending the construction. In other words, for each step in the construction process, BGS will determine the associated costs and assist the Legislature in its determination of adequate and appropriate funding for the construction of this project. This is in addition to the work already being done by AHS to ascertain program costs so as to assist the Legislature in determining appropriate funding levels.

A. CON Statute

The cost of the project is reasonable because:

- A. *The applicant’s financial condition will sustain any financial burden likely to result from completion of the project;*
- B. *The project will not result in an undue increase in the costs of medical care; and*
- C. *less expensive alternatives do not exist, would be unsatisfactory, or are not feasible or appropriate. 18 V.S.A. § 9437(2).*

The project will not have an undue adverse impact on any other existing services provided by the applicant. 18 V.S.A. § 9437(5).

B. HRAP CON Standards

- 3. *That the impact of the project on payers, including uninsured persons, insurers, employers, self-insureds, and State, federal and local governmental providers of health care benefits is necessary and reasonable.*
- 7. *If a project proposes to, or is likely to, expand geographic access to services, that:*
 - a. *the current travel-time exceeds reasonable access standards;*
 - b. *the cost to those who finance Vermont’s health care system will not increase unreasonably;*
 - c. *improvements in clinical outcome or quality of care are demonstrated that outweigh or justify any added cost, and*
 - d. *increased costs can, and should be, reasonably absorbed, or funded, by the payers.*
- 8. *If a project proposes to retain access to one or more services, that:*
 - a. *maintaining the current level of access for each service is consistent with meeting the provisions in the Health Resource Allocation Plan;*

- b. *the cost to those who finance Vermont's health care system will not increase unreasonably;*
- c. *improvements in clinical outcome or quality of care are demonstrated that outweigh or justify any added cost, and*
- d. *increased costs can, and should be, reasonably absorbed, or funded, by the payers.*

C. VSH Futures Legislation

Act No. 122, 2003-04, § 141a (VSH Future Planning Advisory Group) (emphasis added):

(e) The secretary or designee shall consult with the advisory group on all aspects of strategic planning, including methods of seeking further public input, investigation of program options and policies, and recommendations concerning organization, operations, funding, and implementation. . . .

(g) The state hospital future planning advisory group shall consider and make recommendations to the secretary on the following:

- (2) designs for programs that are responsive to changes over time in levels and types of need, service delivery practices, and sources of funding; . . .*
- (9) methods for maximizing federal funding sources and mental health coverage under private and public insurance plans.*

(h) On or before October 15, 2004, the secretary shall prepare and present for approval to the mental health oversight committee an outline of the findings and recommendations for replacement of the functions of the Vermont state hospital.

(i) On or before January 15, 2005, the secretary shall prepare and present to the mental health oversight committee and the joint fiscal committee a report containing a comprehensive implementation plan for replacing the services currently provided by the Vermont state hospital developed within the context of long-range planning for a comprehensive continuum of care for mental health services. The report shall include proposals for legislation and capital and operational funding needed to implement the plan.

Act No. 122, 2003-04, § 141c (Mental Health Oversight Committee):

(b) The committee shall review whether the secretary's study on the department of developmental and mental health services designated agency provider system required in Sec. 141 of this act, the strategic plan for developing alternatives to the Vermont state hospital required in Sec. 141a of this act, and the department of corrections mental health services plan achieve the goals and principles stated herein effectively, efficiently, and satisfactorily, including that the findings and recommendations of the reports are coordinated and complementary. The committee shall specifically: . . .

- (4) review and approve, modify, or disapprove the recommendations contained in the reports required by Secs. 141 and 141a of this act and authorize preliminary implementation steps for developing alternatives to the services currently provided by the Vermont state hospital developed within the context of long-range planning for a comprehensive continuum of care for mental health services.*

IV. CONSTRUCTION

BGS has sole statutory authority over construction, improvement, replacement, repairs of and additions to state buildings. The legislature routinely authorizes BGS, through specific appropriations, to select sites, purchase lands, and determine plans and specifications for a particular project.

Because the State is the “applicant” for this project, BISHCA’s review could place that Agency in direct conflict with the Legislature. Since the hospital will be built by the State, approved by the various oversight committees, and authorized by the General Assembly, any subsequent conditions, restrictions, or changes imposed by BISHCA would be in direct conflict with the mandates given to AHS and BGS by the General Assembly. The CON process conflicts with the Department of Buildings and General Services’ statutory authority to arrange and supervise the design and construction of all state-owned buildings.

In addition to the authority and processes outlined above, the VSH project must also navigate the numerous permit processes and reviews to which all state construction projects are subject. For instance, any project must obtain an Act 250 permit. Act 250 has a public participation component and requires the applicant to identify and address the impacts that a project will have on noise, traffic, aesthetics, municipal services, water conservation, energy conservation, growth, public investments, and conformance with local and regional plans.

The proposed project will have to seek approval from the applicable municipal zoning authorities such as the development review board, planning commission, and in the case of City of Burlington, the Design Advisory Board. These processes also allow public participation and are subject to public hearings and notice requirements. Public input is permitted on the relevant criteria as provided in the particular town or city’s zoning bylaws.

A. HRAP CON Standards

21. *That, in the case of construction projects, both new and renovation:*

- a. the costs and methods of the proposed construction, including the costs and methods of energy provision and the probable impact of the construction project on the cost of providing health services are necessary and reasonable;*
- b. the project is cost-effective in terms of energy conservation measures;*
- c. the impact of construction on the cost of new services is necessary and reasonable;*
- d. in the case of new construction, that it is the best alternative; and*
- e. the construction project will comply with the Guidelines for Construction and Equipment of Hospital and Medical Facilities as issued by the American Institute of Architects (AIA), Committee on Architecture for Health that the applicant will comply with the terms of Section 504 of the Rehabilitation Act of 1973, related to handicapped access, and that the applicant will comply with the standards for commercial construction, assuring nondiscrimination on the basis of disability.*

B. BGS Statute (29 V.S.A. § 152(a))

The commissioner of buildings and general services, in addition to the duties expressly set forth elsewhere by law, shall have the authority to:

- (3) Prepare or cause to be prepared plans and specifications for construction and repair on all state-owned buildings:*
 - (A) For which the legislature or the emergency board has made specific appropriations. In consultation with the department or agency concerned and with the approval of the board of state buildings, he shall select sites, purchase*

lands, determine plans and specifications and advertise for bids for the furnishing of materials and construction thereof and of appurtenances thereto. He shall determine the time for beginning and completing the construction. . . .

- (4) Supervise construction, improvement, repair, alteration, demolition and replacement of and addition to state buildings, structures and facilities . . .*
- (6) Determine the necessity of repairs and replacements to all state-owned buildings and cause urgent repairs and replacements to be accomplished if within the limits of specific appropriations or if approved by the emergency board. . . .*
- (8) Employ such architectural and other professional assistance as he or she deems necessary in the performance of his or her duties. . . .*

V. NUMBER/LOCATION OF BEDS

BISHCA's HRAP CON standards indicate that BISHCA will undertake an independent assessment of the number and location of beds provided under the VSH Futures Plan. This inquiry is at the heart of the VSH Futures planning process outlined in the VSH Futures legislation. BISHCA review of the recommendations set forth in the Futures Plan is a redundant and inefficient use of state resources. Most significantly, the process could culminate with a CON that contains determinations or imposes conditions that: (1) conflict with the decisions of AHS, the Futures Advisory Group, the Mental Health Oversight Committee and the Joint Fiscal Committee; (2) usurp BGS's statutory authority over the design, planning, construction and timeline; and (3) require changes to the Legislature's timeline to coincide with the realities of the CON process.

The Legislature directed the Futures Advisory Group and the Secretary of Human Services in developing the Futures Plan to consider a range of alternatives, including:

- whether new general or forensic inpatient programs should be created . . . ;
- whether designated hospitals should be encouraged to expand existing psychiatric services;
- whether additional community-based, hospital alternative, or diversion programs should be developed;
- whether the state should expand community-based peer run programs;
- whether to create a flexible individual case management program to fund support services necessary to keep individuals out of the hospital.

The Legislature has adopted the Futures Plan in principle, specifically, the recommendation that "[t]he current state hospital facility should be replaced with a facility or facilities with fewer than 54 beds and with meaningful programmatic integration of medical and community mental health services." BISHCA could find itself in a position where its findings and determinations conflict with the Legislature's determination that the Futures Plan adequately addresses this issue.

A. HRAP CON Standards

- 16. *That, with respect to mental health and substance abuse services, the project will: . . .*
 - c. *meet or exceed appropriate access and quality standards, including the following:*

1. *Short term psychiatric care (not necessarily in a dedicated unit) and psychiatric emergency care should be available to most Vermonters within the geographic areas served by the designated agency system for mental health, substance abuse and developmental services.*
2. *Psychiatric services in dedicated units should be available to most Vermonters within the hospital service areas for the regional and tertiary hospitals. . . .*
4. *Services should address unmet need in Vermont for: . . .*
 - xix. *adjustments to the available beds at VSH or its successors made in accordance with the capacity of community programs to provide effective services.*
 - xx. *maintaining current levels of local capacity and also supporting necessary increases in existing facilities.*
 - xxi. *additional beds in community hospitals, to be measured on a case-by-case basis.*
 - xxii. *capacity in therapeutic community residences to be kept at levels adequate to assure maintenance of the census at Vermont State Hospital and its successor institutions at appropriate levels.*
7. *If a project proposes to, or is likely to, expand geographic access to services, that:*
 - a. *the current travel-time exceeds reasonable access standards;*
 - b. *the cost to those who finance Vermont's health care system will not increase unreasonably;*
 - c. *improvements in clinical outcome or quality of care are demonstrated that outweigh or justify any added cost, and*
 - d. *increased costs can, and should be, reasonably absorbed, or funded, by the payers.*
8. *If a project proposes to retain access to one or more services, that:*
 - a. *maintaining the current level of access for each service is consistent with meeting the provisions in the Health Resource Allocation Plan;*
 - b. *the cost to those who finance Vermont's health care system will not increase unreasonably;*
 - c. *improvements in clinical outcome or quality of care are demonstrated that outweigh or justify any added cost, and*
 - d. *increased costs can, and should be, reasonably absorbed, or funded, by the payers.*
23. *[Whether the service (psychiatric services in dedicated units) is considered to be appropriately provided in that category hospital (Critical Access, Community, Regional, or Tertiary)].*

B. VSH Futures Legislation

Act No. 122, 2003-04, § 141a (g):

The state hospital future planning advisory group shall consider and make recommendations to the secretary on the following

- (1) *in general, the future of Vermont's inpatient psychiatric programs, including those currently provided by the Vermont state hospital and, more specifically, whether new general or forensic inpatient programs should be created, either in partnership with designated hospitals or with hospitals or other facilities that do not currently provide inpatient psychiatric services;*
- (2) *designs for programs that are responsive to changes over time in levels and types of need, service delivery practices, and sources of funding;*
- (3) *whether designated hospitals should be encouraged to expand existing psychiatric services;*

- (4) *whether additional community-based, hospital alternative, or diversion programs should be developed;*
- (5) *whether the state should expand community-based peer run programs.*

See also 18 V.S.A. § 9435(b):

Excluded from this subchapter are community mental health centers supervised by the commissioner of developmental and mental health services under chapters 177 and 207 of this title, provided the commissioner of developmental and mental health services makes a written approval of the proposed health care project.

VI. HRAP

The HRAP on the one hand “[s]upports implementation of the broad recommendations in the VSH Futures Plan,” but on the other hand insists that “[t]here should be further analysis of the geographic distribution of capacity and need to determine the best location and number of beds.” Nonetheless, pursuant to Futures legislation, this “analysis of the geographic distribution of capacity and need” has already been undertaken by the Futures Advisory Group and the Secretary of the Agency of Human Services, and the Legislature has expressly adopted their recommendations on these issues.

A. CON Statute

A certificate of need shall be granted if the applicant demonstrates and the commissioner finds that:

- (1) *the application is consistent with the health resource allocation plan.*

B. HRAP CON Standards

2. *That the proposed health care project will facilitate implementation of the HRAP concerning the resources, needs and appropriate system of delivery of health care services.*

Compare HRAP at 48 (Recommendation 1):

Support implementation of the broad recommendations in the Vermont State Hospital Futures Plan, including:

- *An adequate number of beds to provide essential core services, including:*
 - *Inpatient beds at an appropriate general hospital (preferably an academic medical center),*
 - *Intensive care beds at another hospital,*
 - *Sub-acute beds in one to three locations,*
 - *A secure residential facility, and*
 - *Additional diversion beds in two or three locations.*
- *Location of services in or near the most appropriate setting: academic medical centers, community hospitals, or other community-based facilities.*
- *Construction of new facilities when existing facilities are inadequate to meet the standard of care required for the service.*
- *This implementation should include a thorough clinical and operational planning process that includes the State’s hospitals.*

But see HRAP at 46 (“While the Vermont State Hospital Futures Plan suggests that there is not a need to add additional beds beyond those at VSH, capacity at other locations will need to be added to replace the existing beds. There should be further analysis of the geographic distribution of capacity and need to determine the best location and number of beds.”).

VII. STANDARDS OF CARE

BISHCA's HRAP CON standards spell out goals relative to the provision of health care services. These include the Institute of Medicine Aims (safety, timeliness, effectiveness, efficiency, equity, and patient-centered) and the *Vermont Blueprint for Health: Chronic Care Initiative* (patient self-management, evidence-based care, promotion of healthy lifestyles, chronic care information registry, investment in quality). With the single exception of the chronic care information registry, The VSH Futures Plan is consistent with and promotes these goals.

A. Institute of Medicine Aims

1. HRAP Con Standards

16. That, with respect to mental health and substance abuse services, the project will: . . .
- c. meet or exceed appropriate access and quality standards, including the following: . . .
3. Services should meet the six IOM Aims [Safety, Timeliness, Effectiveness, Efficiency, Equity, and Patient-Centered], with particular focus on achieving patient-centered (and family-centered) and safe care.

B. VSH Futures Legislation

Act No. 122, 2003-04, § 141a(f):

The principles guiding the state hospital future planning advisory group in creating the immediate and long-term plans for the Vermont state hospital shall include the following:

- (1) an understanding of the role of active treatment within the goal of recovery [Effectiveness];
- (2) an understanding of the role of trauma in the lives of individuals [Effectiveness, Patient-Centered];
- (3) accessible general medical care [Safety, Timeliness, Effectiveness, Efficiency];
- (4) minimal use of involuntary interventions such as seclusion, restraint, and involuntary medication [Safety, Equity, Patient-Centered];
- (5) staff training in the use of safe and appropriate alternatives to involuntary interventions [Safety, Equity, Patient Centered];
- (6) consumers' participation in the development and implementation of their treatment plans [Effectiveness, Patient-Centered];
- (7) consumers' right to privacy and the right to have information regarding their care remain confidential, unless disclosure is authorized by the consumer or required under the law [Equity];
- (8) ongoing consumer and community input with regard to program oversight and development [Patient-Centered]; and
- (9) accountability for all components of the mental health care system [Safety, Timeliness, Effectiveness, Efficiency, Equity].

Act No. 122, 2003-04, § 141a(g):

The state hospital future planning advisory group shall consider and make recommendations to the secretary on the following:

- (1) in general, the future of Vermont's inpatient psychiatric programs, including those currently provided by the Vermont state hospital and, more specifically, whether new

- general or forensic inpatient programs should be created, either in partnership with designated hospitals or with hospitals or other facilities that do not currently provide inpatient psychiatric services [Efficiency];*
- (2) *designs for programs that are responsive to changes over time in levels and types of need, service delivery practices, and sources of funding [Effectiveness, Efficiency];*
 - (3) *whether designated hospitals should be encouraged to expand existing psychiatric services [Efficiency];*
 - (4) *whether additional community-based, hospital alternative, or diversion programs should be developed [Efficiency];*
 - (5) *whether the state should expand community-based peer run programs [Efficiency, Patient-Centered];*
 - (6) *whether to create a flexible individual case management program to fund support services necessary to keep individuals out of the hospital [Efficiency, Patient-Centered];*
 - (7) *how to design mental health services to maximize safety and ensure appropriate protection for the legal rights of consumers [Safety, Equity];*
 - (8) *the development of ongoing quality monitoring and consumer satisfaction programs [Safety, Timeliness, Effectiveness, Efficiency, Patient-Centered];*
 - (9) *methods for maximizing federal funding sources and mental health coverage under private and public insurance plans [Efficiency, Equity];*
 - (10) *the necessity of developing housing alternatives, including group homes, supportive housing, and independent living options [Efficiency, Patient-Centered];*
 - (11) *the integration of primary care with the mental health system of care, including the need for education on the appropriate uses of psychotropic medications and follow-up care [Safety, Effectiveness, Efficiency];*
 - (12) *governance issues, including governance of the Vermont state hospital and an assessment of the role of the board of mental health and whether new members should be appointed [Equity]; and*
 - (13) *ways to improve judicial proceedings concerning involuntary treatment and involuntary medication [Equity].*

**B. Vermont Blueprint for Health:
Chronic Care Initiative**

1. HRAP CON Standards

6. *That the proposal will foster implementation of the Vermont Blueprint for Health: Chronic Care Initiative, including the following goals and values:*
 - a. *Goals:*
 1. *Vermonters with chronic conditions will be effective managers of their own health.*
 2. *The proportion of individuals receiving care consistent with evidence-based standards will increase.*
 3. *Vermonters will live in communities that support healthy lifestyles, and have the ability to prevent and manage chronic conditions.*
 4. *A chronic care information system (registry functionality) will be available to providers, which will support chronic disease prevention, treatment and management for effective individual and population-based care.*
 5. *Vermonters will be served by a health care system that invests in and rewards quality.*

2. VSH Futures Legislation

Act No. 122, 2003-04, § 141a(f):

The principles guiding the state hospital future planning advisory group in creating the immediate and long-term plans for the Vermont state hospital shall include the following:

- (6) *consumers' participation in the development and implementation of their treatment plans; . . .*
- (8) *ongoing consumer and community input with regard to program oversight and development; and*
- (9) *accountability for all components of the mental health care system.*

Act No. 122, 2003-04, § 141a(g):

The state hospital future planning advisory group shall consider and make recommendations to the secretary on the following:

- (8) *the development of ongoing quality monitoring and consumer satisfaction programs; . . .*
- (10) *the necessity of developing housing alternatives, including group homes, supportive housing, and independent living options.*

VIII. QUALITY OF CARE

BISHCA seeks to ensure the delivery of quality health care through HRAP CON standards incorporating the *Vermont Blueprint for Health: Chronic Care Initiative*. The VSH Futures legislation provides its own standards for assuring the quality of care to be provided under the Futures Plan.

A. CON Statute

The project will improve the quality of health care in the state or provide greater access to health care for Vermont's residents, or both. 18 V.S.A. § 9437(4).

B. HRAP CON Standards

- 6. *That the proposal will foster implementation of the Vermont Blueprint for Health: Chronic Care Initiative, including the following goals and values:*
 - a. *Goals: . . .*
 - 3. *Health Care System: create a culture, organization and mechanisms that promote safe, high quality care; visibly support improvement at all levels of the organization; encourage open and systemic handling of errors and quality problems; provide incentives based on quality of care; develop agreements that facilitate care coordination within and across organizations.*
 - b. *Values: . . .*
 - 5. *Decision Support: promote clinical care that is consistent with scientific evidence and patient preferences: embed evidence-based guidelines into daily clinical practice.*
 - 6. *Delivery System Design: assure the delivery of effective, efficient clinical care and self-management support; define roles and distribute tasks among team members; use planned interactions to support evidence-based care; provide clinical case management services for complex patients; ensure regular follow up by the care team; give care that patients understand and that fits with their cultural background.*
- 16. *That, with respect to mental health and substance abuse services, the project will: . . .*
 - c. *meet or exceed appropriate access and quality standards, including the following: . . .*

4. Services should address unmet need in Vermont for: . . .
 - ix. sufficient mental health and substance abuse prevention, screening and aftercare services.

C. VSH Futures Legislation

Act No. 122, 2003-04, § 141a(f):

The principles guiding the state hospital future planning advisory group in creating the immediate and long-term plans for the Vermont state hospital shall include the following:

- (3) accessible general medical care; . . .
- (9) accountability for all components of the mental health care system.

Act No. 122, 2003-04, § 141a(g):

The state hospital future planning advisory group shall consider and make recommendations to the secretary on the following:

- (6) whether to create a flexible individual case management program to fund support services necessary to keep individuals out of the hospital; . . .
- (8) the development of ongoing quality monitoring and consumer satisfaction programs; . . .
- (11) the integration of primary care with the mental health system of care, including the need for education on the appropriate uses of psychotropic medications and follow-up care.

See also 18 V.S.A. § 9435(b):

Excluded from this subchapter are community mental health centers supervised by the commissioner of developmental and mental health services under chapters 177 and 207 of this title, provided the commissioner of developmental and mental health services makes a written approval of the proposed health care project.

IX. PATIENT-CENTERED CARE

BISCHA’s HRAP CON standards again rely upon the *Vermont Blueprint for Health: Chronic Care Initiative* in attempting to outline programmatic objectives in the area of patient self-management. Futures legislation specifically addresses this topic by requiring the Futures Advisory Group to consider as one of its foundational principles “consumers’ participation in the development and implementation of their treatment plans.”

A. HRAP CON Standards

6. That the proposal will foster implementation of the *Vermont Blueprint for Health: Chronic Care Initiative*, including the following goals and values: . . .
 - b. Values:
 1. Self-care: empower and prepare patients to manage their health and health care; emphasize the patient's central role in managing their health; use effective self-management support strategies; organize internal and community resources to provide ongoing self-management support to patients.
 2. Community: mobilize community resources to meet needs of patients. . . .
 6. Delivery System Design: assure the delivery of effective, efficient clinical care and self-management support; define roles and distribute tasks among team

members; use planned interactions to support evidence-based care; provide clinical case management services for complex patients; ensure regular follow up by the care team; give care that patients understand and that fits with their cultural background.

16. *That, with respect to mental health and substance abuse services, the project will: . . .*
 - c. *meet or exceed appropriate access and quality standards, including the following: . . .*
 4. *Services should address unmet need in Vermont for: . . .*
 - xvii. *increased peer-operated programs for mental health recovery. . .*
 - xi. *peer recovery services.*

B. VSH Futures Legislation

Act No. 122, 2003-04, § 141a(f):

The principles guiding the state hospital future planning advisory group in creating the immediate and long-term plans for the Vermont state hospital shall include the following:

- (6) *consumers' participation in the development and implementation of their treatment plans; . . .*
- (8) *ongoing consumer and community input with regard to program oversight and development.*

Act No. 122, 2003-04, § 141a(g):

The state hospital future planning advisory group shall consider and make recommendations to the secretary on the following:

- (4) *whether additional community-based, hospital alternative, or diversion programs should be developed; . . .*
- (5) *whether the state should expand community-based peer run programs.*

X. SUBSTANCE ABUSE

The HRAP CON standards would specifically require any facility developed under the Futures Plan to provide an array of substance abuse services. Inpatient substance abuse treatment at the new facility would necessarily be a part of the care provided, consistent with generally accepted practices in psychiatry and the quality of care standards contained in the Futures legislation. To the extent these services are to be provided on an outpatient basis, they would be provided by Designated Agencies and are outside BISHCA's jurisdiction under the exclusion for community mental health centers. 18 V.S.A. § 9435(b).

A. HRAP CON Standards

16. *That, with respect to mental health and substance abuse services, the project will: . . .*
 - c. *meet or exceed appropriate access and quality standards, including the following: . . .*
 4. *Services should address unmet need in Vermont for: . . .*
 - vi. *improved care for people with co-occurring disorders;*
 - vii. *access to opiate addiction treatment (methadone and buprenorphine). .*
 - . .

- ix. *sufficient mental health and substance abuse prevention, screening and aftercare services; . . .*
- xv. *substance abuse primary prevention efforts,*
- xvi. *safe and sober housing for people in recovery.*

B. VSH Futures Legislation

Act No. 122, 2003-04, § 141a(f):

The principles guiding the state hospital future planning advisory group in creating the immediate and long-term plans for the Vermont state hospital shall include the following:

- (8) *ongoing consumer and community input with regard to program oversight and development.*
- (9) *accountability for all components of the mental health care system.*

Act No. 122, 2003-04, § 141a(g):

The state hospital future planning advisory group shall consider and make recommendations to the secretary on the following:

- (4) *whether additional community-based, hospital alternative, or diversion programs should be developed;*
- (5) *whether the state should expand community-based peer run programs;*
- (6) *whether to create a flexible individual case management program to fund support services necessary to keep individuals out of the hospital; . . .*
- (8) *the development of ongoing quality monitoring and consumer satisfaction programs; . . .*
- (10) *the necessity of developing housing alternatives, including group homes, supportive housing, and independent living options;*
- (11) *the integration of primary care with the mental health system of care, including the need for education on the appropriate uses of psychotropic medications and follow-up care.*

See also 18 V.S.A. § 9435(b):

Excluded from this subchapter are community mental health centers supervised by the commissioner of developmental and mental health services under chapters 177 and 207 of this title, provided the commissioner of developmental and mental health services makes a written approval of the proposed health care project.

XI. SUICIDE PREVENTION

The HRAP CON standards would specifically require any facility developed under the Futures Plan to provide suicide prevention services. To the extent these services are to be provided on an outpatient basis, they are outside BISHCA's jurisdiction under the exclusion for community mental health centers. 18 V.S.A. § 9435(b). Consistent with generally accepted practices in psychiatry, suicide prevention is a necessary component of inpatient psychiatric care. This topic is covered under the quality of care standards contained in the Futures legislation.

A. HRAP CON Standards

- 16. *That, with respect to mental health and substance abuse services, the project will: . . .*
 - c. *meet or exceed appropriate access and quality standards, including the following: . . .*

4. *Services should address unmet need in Vermont for: . . .*
 - iv. *improved treatment for suicidal patients;*
 - xii. *suicide prevention programs.*

A. VSH Futures Legislation

Act No. 122, 2003-04, § 141a(f):

The principles guiding the state hospital future planning advisory group in creating the immediate and long-term plans for the Vermont state hospital shall include the following:

- (8) *ongoing consumer and community input with regard to program oversight and development.*

Act No. 122, 2003-04, § 141a(g):

The state hospital future planning advisory group shall consider and make recommendations to the secretary on the following:

- (7) *how to design mental health services to maximize safety and ensure appropriate protection for the legal rights of consumers.*

XII. OUTPATIENT CARE

BISHCA’s HRAP CON criteria would require the proposed facility to provide a variety of outpatient treatments. However, the outpatient treatment provided to patients receiving treatment from the new facility will be provided by community mental health agencies over which BISHCA does not have jurisdiction. In 2003, the legislature amended the CON statute to exclude from its scope “community mental health centers supervised by the commissioner of developmental and mental health services under chapters 177 and 207 [pertaining to designated community mental health agencies] of this title, provided the commissioner of developmental and mental health services makes a written approval of the proposed health care project.” 18 V.S.A. § 9435(b). Chapter 207 of Title 18 requires the Commissioner [of DDMHS] to “ensure that community services to mentally ill and mentally retarded persons throughout the state are provided through designated mental health agencies.” 18 V.S.A. § 8907(a).

A. HRAP CON Standards

16. *That, with respect to mental health and substance abuse services, the project will: . . .*
 - c. *meet or exceed appropriate access and quality standards, including the following: . . .*
 4. *Services should address unmet need in Vermont for: . . .*
 - ii. *access to intensive outpatient programs;*
 - iii. *access to partial hospitalization programs; . . .*
 - viii. *availability of outpatient services in order to decrease the demand for more costly emergency and hospital-based care . . .*
 - xi. *peer recovery services . . .*
 - xiii. *a full range of community-based treatment and support.*
6. *That the proposal will foster implementation of the Vermont Blueprint for Health: Chronic Care Initiative, including the following goals and values: . . .*

- b. Values:
 - 2. Community: mobilize community resources to meet needs of patients.

B. VSH Futures Legislation

Act No. 122, 2003-04, § 141a(f):

The principles guiding the state hospital future planning advisory group in creating the immediate and long-term plans for the Vermont state hospital shall include the following:

- (8) ongoing consumer and community input with regard to program oversight and development.

Act No. 122, 2003-04, § 141a(g):

The state hospital future planning advisory group shall consider and make recommendations to the secretary on the following:

- (4) whether additional community-based, hospital alternative, or diversion programs should be developed
- (5) whether the state should expand community-based peer run programs;
- (6) whether to create a flexible individual case management program to fund support services necessary to keep individuals out of the hospital.

But see 18 V.S.A. § 9435(b):

Excluded from this subchapter are community mental health centers supervised by the commissioner of developmental and mental health services under chapters 177 and 207 of this title, provided the commissioner of developmental and mental health services makes a written approval of the proposed health care project.

XIII. HOUSING

BISHCA’s HRAP CON criteria would require the proposed facility to provide housing in the community for persons diagnosed with mental illness. The Futures legislation directed the Futures Advisory Group to consider a variety of community treatment resources. Further, any housing associated with the new hospital will be provided by community mental health agencies. As discussed above, the Legislature has amended the CON statute to exclude from its scope “community mental health centers supervised by the commissioner of developmental and mental health services.” Any decisions made by BISHCA in this area would be either duplicative or in conflict with decisions made by the Advisory Committee and Legislature. .

A. HRAP CON Standards

- 16. That, with respect to mental health and substance abuse services, the project will: . . .
 - c. meet or exceed appropriate access and quality standards, including the following: . . .
 - 4. Services should address unmet need in Vermont for: . . .
 - x. access to residential care; . . .
 - xiv. affordable housing options, . . .
 - xvi. safe and sober housing for people in recovery.

B. VSH Futures Legislation

Act No. 122, 2003-04, § 141a(g):

The state hospital future planning advisory group shall consider and make recommendations to the secretary on the following: . . .

- (4) *whether additional community-based, hospital alternative, or diversion programs should be developed;*
- (5) *whether the state should expand community-based peer run programs . . .*
- (10) *the necessity of developing housing alternatives, including group homes, supportive housing, and independent living options.*

See also 18 V.S.A. § 9435(b):

Excluded from this subchapter are community mental health centers supervised by the commissioner of developmental and mental health services under chapters 177 and 207 of this title, provided the commissioner of developmental and mental health services makes a written approval of the proposed health care project.

XIV. SERVICE DELIVERY

Application of BISHCA's HRAP standards to the new facility would put BISHCA in the role of making policy decisions with respect to the programs overseen by the Division of Mental Health. These are issues that under statute are committed to the discretion of the Division of Mental Health, and not to BISHCA.

A. HRAP CON Standards

16. *That, with respect to mental health and substance abuse services, the project will:*

- a. *foster the State's focus on developing a coordinated system that encourages access to the appropriate and least restrictive level of care;*
- b. *reflect the desirability of retaining the designated local provider network for the treatment of individuals with long-term and severe psychiatric needs;*
- c. *meet or exceed appropriate access and quality standards, including the following: . . .*
 - 4. *Services should address unmet need in Vermont for: . . .*
 - i. *mental health, psychiatric and substance abuse services, particularly for children and adolescents; . . .*
 - v. *improved education and support for primary care providers, and better integration of primary care and mental health. . .*
 - xviii. *diversion programs such as use of the 72-hour emergency hold programs and other initiatives in psychiatric units in the State's local general hospitals as effective tools in diverting admissions from the Vermont State Hospital or its successor facilities. . . .*
 - xxiii. *organizations providing mental-health services to have linkage agreements with other appropriate providers in the community to assure a coordinated system of care that allows access to the appropriate level of care.*

B. VSH Futures Legislation

Act No. 122, 2003-04, § 141a(f):

The principles guiding the state hospital future planning advisory group in creating the immediate and long-term plans for the Vermont state hospital shall include the following:

- (4) *minimal use of involuntary interventions such as seclusion, restraint, and involuntary medication;*
- (5) *staff training in the use of safe and appropriate alternatives to involuntary interventions;*
- ...
- (8) *ongoing consumer and community input with regard to program oversight and development.*

Act No. 122, 2003-04, § 141a(g):

The state hospital future planning advisory group shall consider and make recommendations to the secretary on the following:

- (1) *in general, the future of Vermont's inpatient psychiatric programs, including those currently provided by the Vermont state hospital and, more specifically, whether new general or forensic inpatient programs should be created, either in partnership with designated hospitals or with hospitals or other facilities that do not currently provide inpatient psychiatric services; . . .*
- (4) *whether additional community-based, hospital alternative, or diversion programs should be developed;*
- (5) *whether the state should expand community-based peer run programs; . . .*
- (11) *the integration of primary care with the mental health system of care, including the need for education on the appropriate uses of psychotropic medications and follow-up care; . .*
- .
- (13) *ways to improve judicial proceedings concerning involuntary treatment and involuntary medication.*

XV. ISSUES ADDRESSED UNDER CON BUT NOT IN FUTURES LEGISLATION

The sole criteria addressed in the HRAP but not in Futures legislation is the requirement incorporating the *Vermont Blueprint for Health: Chronic Care Initiative*, that the proposed hospital develops a chronic care information system. However, the legislature can direct the State to include the registry in the Futures plan for the new facility.

- 6. *That the proposal will foster implementation of the Vermont Blueprint for Health: Chronic Care Initiative, including the following goals and values: . . .*
 - a. *Goals:*
 - 4. *A chronic care information system (registry functionality) will be available to providers, which will support chronic disease prevention, treatment and management for effective individual and population-based care*
 - b. *Values: . . .*
 - 4. *Clinical Information System: organize patient and population data to facilitate efficient and effective care.*

XVI. INTERESTED PARTY STATUS

The certificate of need statute liberally affords interested party status to individuals or organizations who can demonstrate that they are “substantially and directly affected by the new health care project.” 18 V.S.A. § 9440(c)(6). While Futures legislation does not afford consumers and advocates the same right to initiate litigation with respect to the project, it does provide broad opportunities for public input and consensus decision making, not least through the legislative process.

Pursuant to Title 10 VSA, Chapter 151 (Act 250), public hearing and notice requirements apply to applications for State Land Use permits. The Act 250 process allows “interested parties” to participate in the permitting process and address the issues and topics outlined above. Act 250 permits aggrieved parties to appeal an adverse determination by the Act 250 District Commission. Furthermore, interested parties may participate in and appeal the various municipal approvals.